quired. Plaintiff was adjudicated a voluntary bankrupt and died without having been discharged, and his executrix, who, under the will, was not required to give security, applied for a discharge. Creditors of the bankrupt moved to require the executrix to give bond which she resisted on the ground that all of his creditors, including the moving parties, had filed their claims in the bankruptcy proceedings, and that the petitioning creditors had no interest in the property now in her hands, it being property not belonging to the bankrupt at the time of adjudication, and that there was nothing to show that the bankrupt's estate would not be discharged from bankruptcy. Held, that the chancery court as a probate court had a wide discretion under the statute which would not be interfered with unless plainly abused, and that there was no abuse of discretion in requiring the widow to give bond to preserve the estate pending the bankruptcy proceedings for those interested therein.

[Ed. Note.—For other cases, see Executors and Administrators, Dec. Dig. § 26.* 5 Va.-W. Va. Enc. Dig. 511, 679.]

Judgment affirmed. All the judges concur.

POTOMAC POWER CO. *v.* BURCHELL et al.

June 10, 1909.

[64 S. E. 982.]

1. Eminent Domain (§ 320*)—Proceedings by Water Power Company—Payment of Compensation—Effect as to Acquirement of Title.—In view of Code 1887, § 1079 (Code 1904, p. 584), relating to condemnation proceedings, and providing that, on payment into court of the sum awarded as compensation for land, the title shall vest in a company taking land in fee simple, where it appears that money was paid into court by a water power company, and the commissioners' report was confirmed by consent, and that the compensation awarded was ordered to be paid to the attorney of the owner of the land taken, whatever title he had vested by force of the proceedings in the company in fee simple.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. § 852; Dec. Dig. § 320.* 5 Va.-W. Va. Enc. Dig. 113, 114.]

2. Evidence (§ 397*)—Parol Evidence—Varying or Contradicting a Written Contract.—A plain and unambiguous contract in writing is within the direct terms of the rule which forbids parol evidence to vary or contradict a written instrument.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1756-1765; Dec. Dig. § 397.* 10 Va.-W. Va. Enc. Dig. 650, et seq.]

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

3. Eminent Domain (§ 317*)—Proceedings by Water Power Company—Contract Divesting Title—Conditions Subsequent.—The title to land condemned by a water power company having vested in the company by force of the statute and the terms of the contract between the company and the landowner, any provision or stipulation in the contract by which the title was to be divested is to be regarded as a condition subsequent.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. § 317.* 5 Va.-W. Va. Enc. Dig. 113, 114.]

4. Deeds (§ 155*)—Meaning—"Condition Subsequent."—A "condition subsequent" is one to be performed or fulfilled after the vesting of the estate, and the intent of which is to defeat it.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 488-495; Dec. Dig. § 155.* 3 Va.-W. Va. Enc. Dig. 50.]

For other definitions, see Words and Phrases, vol. 2, pp. 1402-1404; vol. 8, p. 7610.]

5. Deeds (§ 155*)—Conditions Subsequent as Not Being Favored in Law.—Conditions subsequent are not favored in law because they tend to destroy estates.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 488-495; Dec. Dig. § 155.* 3 Va.-W. Va. Enc. Dig. 51.]

6. Deeds (§ 155*)—Condition Subsequent—Breach—Relief in Equity.—A contract between the owner of land and a water power company proceeding to condemn it provided that, on payment of the money by the commissioners into court, it should be considered as a complete satisfaction and answer to all objections on the part of the owner, and that the report was to be confirmed and the title to the land vested in the company. It then provided that the company before using the land for any purpose should pay the owner $100 within five years, and that, if it failed to do so within such time, the title should revert to the owner. Held, that the provision for the reversion of the title on failure to pay was, in contemplation of a court of equity, a penalty or forfeiture, the object of which is to secure the payment of money, against which a court of equity would relieve.

[Ed. Note.—For other cases, see Deeds, Dec. Dig. § 155.* 4 Va.-W. Va. Enc. Dig. 442; 11 Id. 173, et seq.]

7. Damages (§ 85*)—Penalty for Nonperformance of Contract.—The general principle is that, whenever a penalty is inserted merely to secure the performance or enjoyment of a collateral object, the latter is considered as the principal intent of the instrument, and the penalty only as accessory, and intended only to secure due performance or damage really incurred by nonperformance.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 179-185; Dec. Dig. § 85.* 4 Va.-W. Va. Enc. Dig. 169, et seq.]

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

8. Equity (§ 24*)—Relief against Penalties for Nonperformance of Contract.—The true test by which to ascertain whether relief against a penalty for nonperformance of a contract car be had in equity is whether compensation can be made, and, if it cannot be made, equity will not interfere, but, if it can, it will grant relief.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 69-76; Dec. Dig. § 24.* 11 Va.-W. Va. Enc. Dig. 173; 4 Id. 169.]

9. Equity (§ 24*)—Relief against Penalty to Secure Payment of Money.—If a penalty provided for in a contract is merely to secure payment of money, courts of equity will relieve the party on payment of the principal and interest.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 69-76; Dec. Dig. § 24.* 11 Va.-W. Va. Enc. Dig. 173; 4 Id. 169.]

Judgment reversed. All the judges concur.

FARMERS' MFG. CO. *v.* WOODWORTH.

June 10, 1909.

[64 S. E. 986.]

1. Evidence (§ 441*)—Parol Evidence Affecting Writings—Contracts.—A contract in writing, complete on its face, cannot be altered by parol evidence of inconsistent agreements previously or contemporaneously made.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2030-2047; Dec. Dig. § 441.* 10 Va.-W. Va. Enc. Dig. 650, et seq.]

2. Evidence (§ 434*)—Parol Evidence—Affecting Writings—Incomplete Contracts.—A partnership wrote to plaintiff, stating that it would build a steel structure as per plans submitted. Plaintiff accepted the proposition. The plans referred to were blueprints drawn to no scale, and containing no specifications. Defendant's company erected the device, but it was condemned as unsafe. Held, in an action for breach of contract, that parol evidence was admissible to show that plaintiff was ignorant of the mechanism of the machine to be built; that defendant's company were mechanical experts; that plaintiff submitted the model to them, and that they submitted a plan of the device, and assured plaintiff that, if built according to that plan, it would meet the specified requirements, and that the machinery would be safe; that plaintiff gave the contract to defendant relying upon such warranties; that the machinery was wholly worthless; and that the representations made to induce plaintiff to enter into the contract were false.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 434.* 10 Va.-W. Va. Enc. Dig. 704.]

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*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.